

1988 October 22

(BOYADJIS, J.)

IN THE MATTER OF THE APPLICATION BY ROBERT SMITH,
NOW OF NICOSIA, FOR LEAVE TO APPLY FOR AN ORDER OF
CERTIORARI

AND

IN THE MATTER OF THE GUARDIANSHIP ORDER, UNDER
APPL. NO. 141/85 OF THE DISTRICT COURT OF NICOSIA

AND

IN THE MATTER OF ARTICLE 155.4 OF THE CONSTITUTION OF
THE CYPRUS REPUBLIC, COURTS OF JUSTICE LAW 14/60,
CIVIL PROCEDURE RULES ORDER 6, R.R. 1-9, OF THE RULES
OF NATURAL JUSTICE AND ON THE INHERENT POWERS OF
THE COURT.

(Application No. 162/88).

Prerogative orders — Certiorari — Leave to apply for — Principles applicable — «Prima facie case», «Sufficiently arguable case» — Two concepts identical.

5 *Natural Justice — Service of application for custody of a child by the mother together with the affidavit in support thereof and the order for service out of the jurisdiction on the father abroad — Application and affidavit drafted in Greek, a language unknown to the father, whereas the order was drafted in English, a language known to him — Prima facie case justifying leave to apply for certiorari*
10 *quashing the order for custody that was eventually made.*

Leave to apply for certiorari granted.

The facts of this case sufficiently appear in the judgment of the Court.

Cases referred to:

15 *HjiPapayiannis v. Registrar of Co-operative Credit Societies (1965)*
 1 C.L.R. 263;

Re Efthymiou (1987) 1 C.L.R. 17;

Re Loucia Maroulleti (1970) 1 C.L.R. 75;

Re Kakos (1985) 1 C.L.R. 250;

Re Argyrides (1987) 1 C.L.R. 23;

Re Ellinas (To be reported in (1989) 1 C.L.R.)

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Application.

Application for leave to apply for an order of certiorari to remove into the Supreme Court of Cyprus and quash an order of the District Court of Nicosia in Appl. No. 141/85 whereby Chryso R. Smith was appointed as guardian of the infant Elaina.

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E. Vrahimi (Mrs), for the applicant.

Cur. adv. vult.

BOYADJIS J. read the following judgment. This is an application submitted by Robert Smith, of Nicosia for leave to apply for an order of certiorari to remove into the Supreme Court and quash an order of the District Court of Nicosia made in Application No. 141/85 whereby applicant's wife Chryso R. Smith was appointed as guardian of their infant daughter Elaina.

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The application is based on the contention that the order impugned is irregular and illegal and was given in contravention of the Rules of Natural Justice.

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As it appears from the affidavit sworn by the applicant in support of the application, the facts are briefly these: The applicant is an English speaking British subject. He married Chryso Gavrielidou on 3.4.1971 and out of this marriage Elaina was born in England on 11.10.1980. He was living in Cyprus holding temporary residence and work permits. He went to live in England alone when his employment was terminated. On 15.4.1986 he received by registered post an office copy of an order of the Nicosia District Court drawn in English and two other documents written in Greek, a language that he does not understand. They have all been attached as exhibits to the aforesaid affidavit.

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The documents in Greek are (i) his wife's application to the Nicosia District Court praying for the granting to her of the guardianship and custody of their infant daughter, and (ii) her affidavit filed in support of the application. The document in English is the order for service of the aforesaid application and

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5 affidavit out of the jurisdiction and by registered post. There is no reference in the latter document either of the nature of the complaint against the present applicant or of the nature of the relief sought against him. Not knowing what the documents represented, he did not defend the case which proceeded in his absence.

10 The competence of this Court to grant the remedy sought by the present proceedings emanates from section 9 of the Administration of Justice (Miscellaneous Provision) Law, No. 33 of 1964 and originates in article 155.4 of the Constitution and section 19 of the Courts of Justice Law, No. 14 of 1960. See *Ioannis Hji Papayiannis v. The Registrar of Co-operative Credit Societies* (1965) 1 C.L.R. 263.

15 The right of audience before a Court of Law is a fundamental rule of natural justice and is safeguarded by article 30.3 of the Constitution. Departure from the rules of natural justice in Court proceedings is by itself a ground for the award of certiorari: *In re Efthymiou* (1987) 1 C.L.R. 17. This is consistent with the effective exercise by the Court of its supervisory jurisdiction and controlling powers over inferior Courts.

20 At this initial stage of the proceedings for the issue of the order of certiorari, the stage of obtaining leave on an ex-parte application, the Court need not go into the matter thoroughly because this is not the stage where the applicant's complaint and contentions are examined and determined conclusively. The remedy is discretionary and the principles applicable to the exercise of the Court's jurisdiction are the same with those applied in England.

30 The question which falls for determination at present is whether the applicant has succeeded in making out a prima facie case sufficiently to justify the granting of leave to him to move this Court in due time to issue an order of certiorari: *In re Loucia Maroulleti* (1970) 1 C.L.R. 75. If an arguable issue arises out of the applicant's submissions which merits an answer, leave should be granted. There are numerous authorities dealing with the concepts of «a prima facie case» and «a sufficiently arguable case». It seems that the two concepts are identical, both demanding the

existence on first view of a convincing enough case. See for example *In re Kakos* (1985) 1 C.L.R. 250, *In re Argyrides* (1987) 1 C.L.R. 23, and *In re Ellinas* (Civil Appeals Nos. 7648 and 7649) given on 2.7.1988 still unreported.*

Having listened to the arguments of learned counsel for the applicant, without deciding at this stage the validity of the applicant's contentions or whether the alleged illegality or contravention of the rules of natural justice did in fact occur, I hold the view that the applicant has succeeded in making out an arguable case deserving an answer and a more thorough consideration after leave is granted as applied for. 5 10

Leave is, therefore, granted to apply for certiorari. The applicant to file his application within 15 days from today.

Application granted.

* To be reported in (1989) 1 C.L.R.